IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 197 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABARI AMRUTBHAI MASABHAI & 8 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR BP GUPTA for Applicant(s) : 1 - 9.
MR MR MENGDEY APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2007

ORAL JUDGMENT

1. In the present petition, the petitioners have challenged the order dated 29.12.2001 passed by the learned Sessions Judge, Mehsana in Criminal Revision Application No.161 of 2000.

2. By the said order, the learned Judge while accepting the Revision Application filed by the State against the bail orders granted to the petitioners, further directed to issue arrest warrant for the offence punishable under Section 302 of the Indian Penal Code against the petitioner.

3. Shortly stated the facts leading to the present petition are as follows.

3.1. On 24.5.2000, the complaint came to be lodged against the petitioner by one Virambhai Jivabhia Rabari alleging offence punishable under Sections 147, 148, 149, 302, 323, 328, 452, 504 and 506 (2) of Indian Penal code. Broadly stated the allegations in the complaint were that the accused persons had attacked the deceased and other family members and had forcibly administered poison to the deceased, who succumbed to death.

3.2. Apparently, the police after some investigation, deleted Section 302 from the complaint. The learned Judicial Magistrate First Class, Vadnagar thereupon granted bail to the accused

persons on 1.6.2000. This order came to be challenged by the State before the learned Sessions Court. The learned Sessions Judge by impugned order while allowing Revision Application further directed that the arrest warrant be issued against the accused for the offence punishable under Section 302 of the Indian Penal Code.

4. Considering the passage of time between the commission of the alleged offence and time of disposing of this petition and also considering the statement of the father of the deceased recorded by the police on 31.12.2005, I do not find that the bail granted to the accused is required to be disturbed. It may be noted that during the pendency of this petition, the impugned order passed by the learned Sessions Judge was stayed. No complaint has been made by the State that the accused having misused the liberty. In that view of the matter, it would not be proper to rearrest the accused at this stage. It is stated that the police has also filed chargesheet, which does not include the offence punishable under Section 302 of the Indian Penal Code. It will be open for the Court to examine the aspects of the matter including the fact, whether satisfactory investigation was carried out or not. It is not disputed that in case, it is found that the investigation was not satisfactory, it would open for the concerned court to call for further investigation and supplementary chargesheet. I, however, express no opinion on requirement of exercising of such powers in the present case.

5. Subject to above observations, the order passed by the learned Sessions Judge is quashed and set aside and the petition is allowed. It will be open for the concerned Court to examine all the aspects of the matter and while examining the chargesheet and the nature of the police investigation, take such further steps as may be necessary and permissible under the law. Rule is made absolute.

(AKIL KURESHI, J.)

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